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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **TR.P.(C.) 199/2024 and CM APPL. 68900/2024**

YOGENDER KUMAR GUPTA @ Y K GUPTAPetitioner

Through: Mr.Anjani Kumar Singh, Advocate.

versus

ARUN KUMAR GUPTA

.....Respondent

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

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26.11.2024

CM APPL. 68901/2024 (for exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

TR.P.(C.) 199/2024 and CM APPL. 68900/2024

3. The petitioner, *vide* the instant petition prays for the following relief:-

“(i) Transfer the case vide Execution No.138/2020 titled as Arun Kumar Gupta versus Yogender Kumar Gupta @ Y.K. Gupta from the Court of Sh. Aashish Gupta Ld. District Judge- 01/North East District /KKD/DELHI to the Court of Sh. Deepanker Mohan Ld. District Judge- 04 Shahdara District/KKD Courts/Delhi.”

4. It is the case of the petitioner that the respondent has obtained the judgement and decree dated 05.10.2023 in Civil Suit No.548 of 2020 for injunction in his favour suppressing the fact that he had already filed an execution petition for the property with the same description as the suit



property. Against the aforesaid order, the petitioner has preferred an appeal which is pending in the Court of District Judge-04 Shahdara District, Karkardooma Courts, Delhi. It also stated by the petitioner that the instant appeal has been filed for the purpose of maintaining the uniformity as both the matters are between the same parties and the subject matter of the *lis* is also the similar.

5. The aforesaid prayer is predominantly premised on the ground that appeal preferred by the petitioner and execution file by the respondent should be heard by the same court.

6. The Court fails to understand as to how such a prayer can be acceded to. It is also observed that appeal will have to be decided on its own merits and the appellate court cannot exercise the powers of an executing court. The execution proceedings will lie before the Court of competent jurisdiction. Merging different proceedings together shall impede the due process of law and will not be in the interest of justice.

7. Accordingly, the Court is unable to accede to the prayer made in the instant petition.

8. In view of the aforesaid, the instant petition stands dismissed.

PURUSHAINdra KUMAR KAURAV, J

NOVEMBER 26, 2024

Nc/mjo